

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION Nos 1364 & 1365 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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KOLI VALJI DHARAMSHIBHAI MAKWANA

Versus

HEIRS OF DECD. REHMANBHAI ADAMBHAI GANCHI

Appearance:

MR BM MANGUKIYA for Petitioners

MR KETAN A DAVE for Respondent No. 1/1-1/9

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 02/05/2002

COMMON ORAL JUDGEMENT

1. Rule. Mr. Dave waives service of rule on behalf of respondents in each matter. By consent rule is fixed forthwith.

2. During hearing Mr. Mangukiya appearing for the petitioners - plaintiffs had taken me through the

petitions and the orders passed by the learned trial Judge, wherein the learned trial Judge has while keeping the applications for amendment pending, ordered that the said Applications be heard alongwith Applications Exh.5, which are pending before him. It is these orders passed by the learned trial Judge dated 18.10.2001 which are challenged before this court.

3. Matters are pending since the issuance of notice on 22.11.2001 and Mr.Dave, learned advocate appearing for the respondents-defendants has also taken me through the affidavit of Shri B.R. Ghanchi dated 9.1.2002. While taking me through the affidavit of Shri B.R.Ghanchi it is the submission of Mr.Dave that Applications Exh.5 were filed by the plaintiffs, wherein the injunction is operating against the defendants and the applications are filed thereafter for seeking amendment, meaning thereby that after obtaining protection, which is continued in favour of the plaintiffs and against the defendants, to delay the proceedings, the applications are filed and the learned trial Judge has accordingly while considering the application for amendment rightly observed that the same will be considered alongwith Applications Exh.5 filed by the petitioners. Exh.5 is the application for injunction filed by the plaintiffs against the defendants and ex parte relief is already granted in favour of the plaintiffs, which is in force till date.

4. Mr.Dave has also placed reliance upon the decision of this Court in the matter of Mansukhlal Pujalal v. Assistant Collector, reported in 1995(2) GLH 712. In the said decision, the Court has commended upon the practice in paragraph 9 of the judgment. In the present case, admittedly Applications Exh.5, wherein ex parte relief is granted in favour of the plaintiffs and against the defendants, are yet to be considered by the learned trial Judge on merits. During the pendency of the said applications, Applications Exh.30 are filed by the petitioners for seeking amendment and the learned trial Judge has while considering the said applications for amendment ordered to keep hearing of Applications Exh.30 alongwith applications Exh.5.

5. Considering the orders, even the learned trial Judge has to consider the applications for amendment, which was filed after application Exh.5 was filed. Applications for amendment are filed subsequently and admittedly the interim relief operating against the defendants is yet to be considered on merits by the learned trial Judge. The learned trial Judge has accordingly, before considering Application Exh.5, to

consider whether the application for amendment Exh.30 is required to be granted or not and he is required to decide the said application on merits. Accordingly while disposing of these Revision Applications, this court is of the view that the learned trial Judge will take first Application Exh.30 for amendment and decide the same in accordance with law and thereafter the learned trial Judge shall proceed with the hearing of the application Exh.5. The ex parte injunction is operating against the defendants. It is expected that the parties will co-operate with the learned trial Judge and the learned trial Judge will dispose of the Applications Exh.30 and Applications Exh.5 as expeditiously as possible in accordance with law and preferably by 31.12.2002.

6. With these observations, rule is made absolute in the above terms in both the Revision Applications. No order as to costs. Direct service is permitted.

(D.K.Trivedi,J)

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